

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

CLERK'S OFFICE
Dzmj
2004
Jackson

IN RE: TRI STATE
CREMATORY LITIGATION

)
)
)

MDL DOCKET NO. 1467

**PLAINTIFFS' MOTION TO ADD JEFF EBERHART
FUNERAL HOME, INC. AS A DEFENDANT**

The Plaintiffs request and move this Honorable Court to add Jeff Eberhart Funeral Home, Inc. as a Defendant to this class action. Jeff Eberhart Funeral Home, Inc. was a defendant in the related litigation pending in the Superior Court of Whitfield County, specifically Partin et al. v. Tri-State Crematory et al., Civil Action File No. 85,287-M ("Partin"). The Plaintiffs in that action, as well as Jeff Eberhart Funeral Home, Inc., filed a Joint Motion seeking transfer of Defendant Jeff Eberhart Funeral Home, Inc. to this litigation. Jeff Eberhart Funeral Home, Inc. consents to joining this case as an individually named funeral home in this certified Plaintiffs' class action as defined by this Court. The Partin Superior Court Order granting the Joint Motion to Transfer is attached as Exhibit "A" to this motion.

The addition of Defendant Jeff Eberhart Funeral Home, Inc. as a Defendant to this action will aid in the settlement of Plaintiffs' claims asserted against this Defendant, and the other funeral homes owned by and operated by, and formerly owned and operated by Jeff Eberhart Funeral Home, Inc.

acquiesces in this motion. To assist the Court, a draft Order is attached as Exhibit "B" to this motion.

Accordingly, the Plaintiffs respectfully request and move that the Court add Jeff Eberhart Funeral Home, Inc. as a Defendant to this class action.

Respectfully submitted this _____ day of April, 2004.

McCAMY, PHILLIPS, TUGGLE & FORDHAM,

LLP

Post Office Box 1105
Dalton, GA 30720-1105
Phone – 706/291-8853
Fax – 706/234-3574

BY: Robert H. Smalley III by William B. G.C. with
ROBERT H. SMALLEY, III *express permission as in*
Georgia Bar No.: 653405 *member of Plaintiffs Steering*
Committee ~ MDL 1447
Attorneys for Plaintiffs

JENKINS & OLSON, P.C.

15 South Public Square
Cartersville, GA 30120

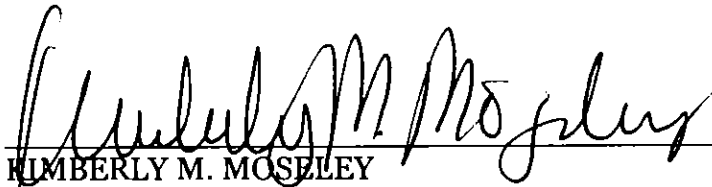
BY: Frankie J. Walker, signed
FRANKIE JENKINS, III, ESQUIRE
Georgia Bar No.: 390550

Liaison/Lead Counsel for the Marsh
Family

by Andrew Davis, Head
Counsel for Funeral Home
Defendants, with express
permission

CONSENTED TO BY:

SMITH, SHAW & MADDOX, LLP

A handwritten signature in black ink, appearing to read "Kimberly M. Moseley", is written over a horizontal line.

KIMBERLY M. MOSELEY

GA Bar No. 530928

P.O. Box 29

Rome, GA 30162-0029

(706) 291-6223

Attorneys for Defendant Jeff Eberhart Funeral Home, Inc.

**IN THE WHITFIELD COUNTY SUPERIOR COURT
STATE OF GEORGIA**

**KAREN PARTIN and ZOE TYSON, on
behalf of themselves and others similarly
situated,**

Plaintiffs,

vs.

CREMATORY DEFENDANTS:

**TRI-STATE CREMATORY, RAY BRENT
MARSH, CLARA MARSH, RAY MARSH
SR., (Deceased), RHAMES LASHEA
MARSH, Individually and d/b/a TRI-
STATE CREMATORY and TRI-STATE
CREMATORY, INC.**

**FUNERAL HOME DEFENDANTS:
and FUNERAL HOME DIRECTORS:**

**ALVIS MILLER & SON FUNERAL HOME,
INC. and DIRECTOR, STEPHEN
MILLER; COCHRAN FUNERAL HOMES,
INC. and DIRECTOR, STEPHEN
COCHRAN; COLLINS FUNERAL HOME,
INC. and DIRECTORS HARTLEY GRAY,
HOWARD COOK, DENNIS REEVES,
JAMES SOUTHERLAND; FINCH
FUNERAL HOME and DIRECTORS
TREVOR WILSON, MAX COCHRAN;
HAY-GANTT FUNERAL HOME, INC. and
DIRECTOR HOWARD GANTT; HELTON
MORTUARY and DIRECTOR ERNEST
SMITH; HENRY-COCHRAN FUNERAL
HOME and DIRECTORS MAX
COCHRAN, STEPHEN COCHRAN; JEFF
EBERHART FUNERAL HOME, INC.
and DIRECTOR JEFFREY EBERHART;
LOGAN FUNERAL HOME and
DIRECTOR JERRY BRYAN HENSLEY;
LYNN'S FUNERAL HOME and
DIRECTOR BILLY MACK
MONTGOMERY, DOUGLAS FAIN
SANDERS; MASON FUNERAL HOME
INC. and DIRECTOR HENRY MASON;**

) CIVIL ACTION

) FILE NO.: 85,287-M

MAX BRANNON & SONS FUNERAL)
HOME and DIRECTORS JAMES E.)
BRANNON, MAX RAY BRANNON,)
JAMES F. CARVER; PONDER)
FUNERAL HOME and DIRECTORS)
STONEWALL PONDER, JERRY BRYAN
HENSLEY; WINGFIELD FUNERAL
HOME and DIRECTOR FRANCES A.
WINGFIELD; WRIGHT MEMORIAL
MORTUARY, INC., and DIRECTOR JOE
WRIGHT, others yet unnamed,

Defendants.

ORDER

This matter is before the Court on the Joint Motion to Transfer Claims Against Defendants Jeff Eberhart Funeral Home, Inc. and Jeffery Eberhart to the Pending Federal Class Action. The federal class action at issue is In re: Tri-State Crematory Litigation, MDL Docket No. 1467, United States District Court for the Northern District of Georgia, Rome Division. According to the parties, this transfer will aid in settlement of Plaintiffs' claims asserted against this Defendant.

Pursuant to this motion, the Court **Grants** the Joint Motion to Transfer Claims Against Defendants Jeff Eberhart Funeral Home, Inc. and Jeffery to the Pending Federal Class Action. Defendants Jeff Eberhart Funeral Home, Inc. and Jeffery Eberhart are hereby dismissed from this case and any future pleadings, specifically the case style, will reflect that Jeff Eberhart Funeral Home, Inc. and Jeffrey Eberhart are no longer parties to this action.

IT IS SO ORDERED, this the _____ day of April, 2004.

Honorable Cindy Morris
Judge, Conasauga Judicial Circuit

Consented to by:

Robert H. Smalley by William S. Al... with express permission a member of Plaintiffs Steering Committee in MDL 1497
Robert H. Smalley, III, Esquire
Georgia Bar No.: 653405
McCAMY, PHILLIPS, TUGGLE & FORDHAM, LLP
Post Office Box 1105
Dalton, GA 30720-1105
Liaison Counsel for Plaintiffs

Jennifer J. Walker signed by Frank E. Jenkins, III, Esquire, Lead Counsel for Funeral Home Defendants in MDL, with express permission
Frank E. Jenkins, III, Esquire
Georgia Bar No.: 390550
JENKINS & OLSON, P.C.
15 South Public Square
Cartersville, GA 30120
Liason/Lead Counsel for the Marsh Family

Kimberly M. Moseley
Kimberly M. Moseley
Georgia Bar No. 530928
SMITH, SHAW & MADDOX, LLP
P.O. Box 29
Rome, GA 30162-0029
Liason/Lead Counsel for Defendant
Jeff Eberhart Funeral Home, Inc.

CERTIFICATE OF SERVICE

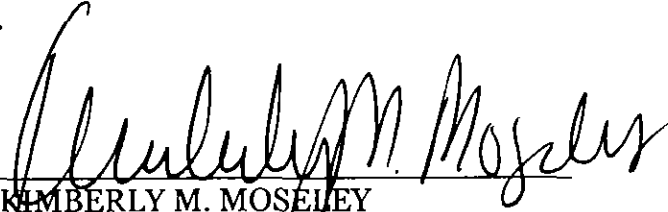
This is to certify that I have this day served counsel for all parties with a copy of the within and foregoing **Plaintiffs' Motion to Add Jeff Eberhart Funeral Home, Inc.** by causing a copy of same to be placed in first class U.S. mail with adequate postage affixed thereto and addressed as follows:

Kimberly M. Moseley
SMITH, SHAW & MADDOX, LLP
P.O. Box 29
Rome, GA 30162-0029
Lead/Liaison for Jeff Eberhart Funeral Home, Inc.

McCracken Poston, Jr. Esquire
OFFICE OF McCRACKEN POSTON
Post Office Box 1130
Ringgold, GA 30736
Liaison/Lead Counsel for
Tri-State Crematory, Inc.

Frank E. Jenkins, III, Esquire
JENKINS & NELSON, P.C.
15 Public Square
Cartersville, GA 30120
Liaison/Lead Counsel for
the Marsh Family

This 14 day of April, 2004.


KIMBERLY M. MOSELEY
Georgia Bar No. 530928